Task Force Security and Investigations, Inc. (NJ), d/b/a Task Force Security and Investigations and Task Force Security, and its Alter Ego, Task Force Security and Investigations, Inc. (NY) *and* LOCAL 1, Independent Brotherhood of Security Employees, Guards and Watchmen of America. Case 22–CA–18578

May 8, 1997

SECOND SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX AND HIGGINS

On February 11, 1997, Administrative Law Judge Steven Davis issued the attached supplemental decision.[1] The Respondent filed limited exceptions and a brief.

The National Labor Relations Board has considered the supplemental decision and the record in light of the exceptions and brief,[2] and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order.

[1] On September 24, 1993, the Board issued a Decision and Order finding that the Respondent, Task Force Security and Investigations, Inc. (NJ) (Respondent NJ) violated Sec. 8(a)(3) and (1) of the Act by, inter alia, conditioning the employment of prospective employees Willie France, Donald Hall, and Hakim Razzaaq upon whether they joined the Union, and by denying them employment because they supported or joined the Union. The Board ordered Respondent NJ, inter alia, to make whole the employees for any loss of earnings and other benefits suffered as a result of the discrimination against them. 312 NLRB 412 (1993). The Court of Appeals for the Third Circuit enforced the Board's Order on November 19, 1993 (Case 93-3534). On August 22, 1994, the Board issued a Supplemental Decision and Order directing Respondent NJ to pay the three employees backpay pursuant to the compliance specification. 314 NLRB No. 132 (Aug. 22, 1994) (not reported in bound volumes). On January 5, 1995, the Court of Appeals for the Third Circuit enforced the Board's Supplemental Decision and Order (Case 94-3592). On August 1, 1996, Region 22 issued a First Amended Supplemental Compliance Specification and Notice of Hearing alleging that Task Force Security and Investigations, Inc. (NY) (Respondent NY) and Respondent NJ are a single employer, and that Respondent NY is the alter ego of Respondent NJ. No exceptions have been filed to the judge's finding that Respondent NY is not an alter ego of Respondent NJ.

[2] We have carefully considered the limited exceptions and brief filed by Frank Maddalena, the president and sole owner of Respondent NY and Respondent NJ. We find no merit to the Respondent's limited exceptions, which in essence allege that Maddalena did not make the final decision not to hire the three employees and that they were not hired because they did not meet the requirements set forth by the Port Authority of New York and New Jersey. The Respondent is essentially attempting to relitigate the underlying unfair labor practice case previously decided by the Board and enforced by the Third Circuit Court of Appeals. A respondent in a compliance proceeding may not relitigate issues previously decided in an underlying unfair labor practice proceeding. *Kidd Electric Co.*, 322 NLRB 33 (1996). We note that the Respondent's exceptions raise no issues concerning the single-employer status of Respondent NY and Respondent NJ.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondents, Task Force Security and Investigations, Inc. (NJ), d/b/a Task Force Security and Investigations and Task Force Security, and its alter ego, Task Force Security and Investigations, Inc. (NY), Brooklyn, New York, their officers, agents, successors, and assigns, shall make whole the individuals named below, by paying them the amounts following their names, plus interest computed in accordance with *New Horizons for the Retarded*, 283 NLRB 1173 (1987), minus tax withholdings required by Federal and state laws:

Willie France	$36,217.79
Donald Hall	41,929.47
Hakim Razzaaq	34,634.85
TOTAL:	$112,782.11

SUPPLEMENTAL DECISION

STATEMENT OF THE CASE

STEVEN DAVIS, Administrative Law Judge. On September 24, 1993, the Board issued its Decision and Order in Case 22–CA–18578, published at 312 NLRB 412, in which the Board directed Task Force Security and Investigations, its officers, agents, successors, and assigns, referred to by its correct name, Task Force Security and Investigations, Inc. (NJ) (Respondent New Jersey), to, inter alia, make whole Willie France, Donald Hall, and Hakim Razzaaq for any loss of earnings and other benefits suffered as a result of the discrimination agaistcan them.

On November 19, 1993, the Court of Appeals for the Third Circuit in Case 93-3534 entered its judgment enforcing in full the Board's Order. Thereafter, on March 31, 1994, Region 22 of the Board issued a compliance specification and notice of hearing, which set forth the amounts of backpay due under the terms of the Board Order.

On August 22, 1994, a Supplemental Decision and Order was issued, directing that Respondent New Jersey pay Donald Hall, Hakim Razzaaq, and Willie France backpay, including medical expenses incurred by Donald Hall, plus interest, as set forth in the compliance specification.

On January 5, 1995, the Court of Appeals for the Third Circuit in Case 94-3592 entered its supplemental judgment enforcing the Board's Supplemental Decision and Order.[1]

On July 30, 1996, Region 22 of the Board issued a supplemental compliance specification and notice of hearing which stated that a controversy existed over whether Respondent New York is an alter ego of Respondent New Jersey, and as

[1] Following the close of the hearing, I requested of counsel for the General Counsel, and she provided, copies of the above two Third Circuit judgments, and the Board's compliance specification, and Supplemental Decision, documents which were not otherwise available to me. I have included those public documents as part of G.C. Exh. 1.

to the liability of Respondent New York to fulfill the remedial obligations of Respondent New Jersey as set forth in the Board's Supplemental Order as enforced.

On August 1, 1996, Region 22 issued a first amended supplemental compliance specification and notice of hearing which alleged that (a) Respondent New York is the alter ego of Respondent New Jersey, and that they are a single employer. The General Counsel asserts that Respondent New York is responsible to remedy the obligations of Respondent New Jersey.

Specifically, that document alleges that Respondents New Jersey and New York have been affiliated business enterprises with common officers, ownership, directors, management, and supervision; have formulated and administered a common labor policy; have shared common premises and facilities; and have held themselves out to the public as single-integrated enterprises.

Respondent filed an answer, and a hearing was held before me on December 16, 1996, in Newark, New Jersey. A letter was filed in behalf of Respondent, and the General Counsel filed a brief.[2]

This Supplemental Decision is based on the entire record including the documents received by the parties, and the demeanor of the sole witness, Frank Maddalena.

The Companies

Respondent New York and Respondent New Jersey both provide security services.

Task Force Security, Inc. was incorporated in New York in 1984, and changed its name in September 1991 to Task Force Security and Investigations, Inc. (Respondent New York). Frank Maddalena was listed as president on the change of name certificate.[3]

In January 1991, Maddalena decided to incorporate a company in New Jersey called Task Force Security and Investigations, Inc. (Respondent New Jersey). He did so in order to bid on a Port Authority contract for Newark Airport. However, when the bid was submitted, only the New York office was in operation. The work of incorporating Respondent New Jersey was done from Respondent New York's Brooklyn office, and the bids were prepared in that office.

Respondent New Jersey was established in order to operate a company pursuant to a contract with the Port Authority of New York and New Jersey to provide security services at Newark Airport. That was Respondent New Jersey's sole customer. The contract with the Port Authority was for a 2-year period, from May 1992 to May 1994. Respondent New Jersey lost the contract at its expiration, and ceased operating at that time. The New Jersey operation resulted in a loss of $60,000 or $90,000.[4]

Maddalena is the president and sole owner and officer of both corporations.[5] His pretrial affidavit states that he was "responsible for all decisions" of both companies.

The two companies performed the same basic work, security services. However, Respondent New York provides those services for private, commercial enterprises, and for Government agencies such as Social Security offices, the Internal Revenue Service, and New York City agencies. In addition, Respondent New York performs security for local block associations, pursuant to which communities are patrolled with cars to supplement, or work in cooperation with the local police.

In contrast, Respondent New Jersey had only one customer and one contract, for the Port Authority of New York and New Jersey, to provide security at Newark Airport. Such security included protection of the perimeter of the airport, manning of security booths, guarding access to the airport where trucks make deliveries, monitoring employee entrances, and watching the runways. Maddalena emphasized that such work was not similar to the work performed by Respondent New York, which consisted of security of buildings, premises, areas, and persons, protecting people from being hurt or property being destroyed or trespassed upon.[6]

Respondent New Jersey had the use of an office at the airport provided by the Port Authority. The Newark operation was managed by Dom Maddalena, the nephew of President Frank Maddalena. Dom reported to Frank regarding the Newark employees.

Dom's responsibilities included overseeing the daily operation of the contract, with the help of five assistant managers, one of whom reported directly to him. The assistant managers directly supervised the guards. The assistant managers were responsible for the guards working their proper hours and being in uniform, the assistant managers reported the guards' hours on timesheets, operated vans which transported the guards to and from their posts, and relieved the guards for their meal and break periods.

Dom worked from 9 a.m. to 5 p.m., unless there was an emergency. From 5 p.m. to 9 a.m., the assistant managers handled emergencies or contacted Dom. Maddalena testified that he was contacted by the manager or assistant managers only on rare occasions, for example, during an emergency at the airport, and then he was contacted just to keep him informed of the situation, such as the addition of additional security guards to protect the perimeter of the airport after the World Trade Center bombing. Dom submitted written reports to Maddalena which kept him apprised of the operation, and would write or fax him if a problem arose.

With respect to discipline, Dom administered routine discipline, and occasionally advised Maddalena of such matters. However, Maddalena was informed if very serious misconduct occurred, including abandoning a post, and drinking while on duty. Maddalena then decided whether to suspend the employee or recommend his discharge. Dom represented Respondent New Jersey at unemployment hearings in New Jersey.

The manner in which discipline was administered was the same at both companies. Thus, Respondents used progressive warnings, and suspensions at both locations.

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[2] The General Counsel's unopposed motion to correct the transcript is granted.

[3] References to Maddalena hereafter are to Frank Maddalena or Frank.

[4] Maddalena gave differing amounts of the loss in two pretrial affidavits.

[5] When Respondent New York was first formed, Maddalena and his wife, who was an officer, each owned 50 percent of the stock. Pursuant to his divorce agreement, he is buying out her share of the corporation. She did not perform any services for the corporation.

[6] The New York guards wore blue uniforms while the New Jersey guards wore brown, pursuant to Port Authority rules.

On occasion, Maddalena met at the airport with Port Authority or U.S. Customs personnel regarding administrative matters. When there, he toured the area for a view of the operation and his employees. Such meetings occurred about twice per year, but he was at the Newark site about one or two times per month.

When employees were hired for the Newark operation, Maddalena reviewed the records of the applicants, and he interviewed them with the assistance of his manager, and his son, Frank Maddalena Jr. Maddalena then recommended their hire to the Port Authority and the Customs Service.

Maddalena testified that personnel practices and training for the New York employees included fingerprinting, a drug test, and certification following a required New York State examination. In contrast, according to Maddalena, New Jersey had its own rules for the hire of employees, mandated by the Port Authority and U.S. Customs, which Respondent was required to follow. He stated that the Newark employees were required to pass a physical examination, administered by the Port Authority. Some disqualifying characteristics included the failure to pass the physical examination, failure to have a high school diploma, and a criminal record. Maddalena stated that he was prevented from hiring employees with such impediments of Port Authority regulations.

Regarding Maddalena's failure to hire three New Jersey employees, his pretrial affidavits support a finding that he personally considered the recommendations of the former supervisors of the three employees involved herein, and he decided not to hire them.

Maddalena discussed with Port Authority personnel those employees who he wanted to discharge, in order to determine whether the Port Authority wanted him to terminate the employees, or retain them and discipline them. If a New Jersey employee committed an act of serious misconduct, Maddalena made a recommendation as to whether to discharge the employee, pursuant to Port Authority rules The final decision, however, was made by Port Authority, and Maddalena was informed of its decision. Maddalena testified that the Port Authority could require him to hire an employee he did not wish to hire, and demand that he retain someone who he wanted to discharge. That has occurred a few times. The Port Authority reserved final approval on Respondent's decisions to hire or fire employees. Nevertheless, the Port Authority approved the majority of applicants for hire recommended by Respondent New Jersey.

With respect to Respondent New York, Maddalena's director of operations, Maria Ricca, oversees the work of the employees, assisted by Supervisors Joe Maddalena, Frank Maddalena Jr., who is Maddalena's son, and Joe Mannino, all family members of Maddalena. Ricca was not responsible for the Newark employees.

Maddalena denied using one set of letterheads for Respondents New York and New Jersey. In fact, a letterhead bearing the address of the Newark operation only, dated in December 1993, was received in evidence.[7] In this connection, Maddalena's letter to a Board agent in August 1992 during the investigation of the Newark operation was written on Respondent New York's stationery. In addition, his business card listed both locations. Further, the two commerce questionnaires Maddalena completed during the Board investigation of the New Jersey corporation stated that the New York corporation was the parent, subsidiary or related company of Respondent New Jersey.

At some time during the operation of the New Jersey contract, Maddalena used the same payroll service, and at all times used the same accountant for both companies. There were separate bank accounts for the two companies, but they were located in the same bank, for the convenience of Maddalena. Maddalena was the sole person authorized to sign the checks of the corporations. He wrote the checks for Respondent New Jersey on New Jersey checks in the airport office whenever he visited that office. Maddalena negotiated the terms of any lease agreement for both companies, and he signed any required documents for them.

Files and records pertaining to the Newark operation were kept in Respondent New Jersey's office at the airport, and records relating to the New York operation were kept in Brooklyn.

Maddalena borrowed $160,000 from his brother in order to start Respondent New Jersey. That money has been repaid. The loan was evidenced by a written note which stated that the brother lent the money to Maddalena, but no formal loan document was signed, and no interest or term within which the money was to be repaid was agreed to.[8]

Regarding financial operations of the two companies, when Respondent New Jersey was short of cash for payrolls which apparently was often because Maddalena testified that New Jersey was always short of money to meet its payroll,[9] Maddalena would electronically transfer money from Respondent New York to the account of Respondent New Jersey. No loan agreement or promissory note was executed between the companies, and no interest was charged for the loan. Maddalena stated that since he was the president of both companies he "agreed to myself" to make the loan. At the conclusion of the New Jersey contract, Respondent New Jersey owed Respondent New York $20,000.

Maddalena stated that the New York company "had to" lend money to the New Jersey corporation, or else Respondent New Jersey would have been out of business much sooner than the extent of its 2-year contract. Maddalena explained that it was essential for the loans to be made because he underestimated his expenses for the contract, and because the Port Authority paid Respondent New Jersey on a monthly basis, he could not meet New Jersey's payroll expenses without such loans.

Maddalena made personal loans to the New Jersey corporation totaling $20,000, without memorializing them in a loan agreement. He simply repaid himself when New Jersey generated a profit.

Maddalena leased four vans for use at Newark. When the Newark contract expired, he returned two of the vans to the leasing company, but transferred the lease on the other two

[7] I reject the General Counsel's request that the letter should not be considered because it was "prepared" after the charge was filed. There was no evidence that the letterhead was printed after the charge was prepared.

[8] It must be noted that in his pretrial affidavit, Maddalena stated that there was "nothing in writing" evidencing the loan from his brother.

[9] Maddalena's pretrial affidavit stated that Respondent New York transferred money to New Jersey three times per month "almost monthly." However, at hearing, he testified that those three transfers occurred only in the month referred to in the affidavit.

to the New York corporation. He did this since he had 1 more year remaining on the leases, and would have lost money had he not done so. Also, the New York corporation needed the vans. The transfer, which was made with the permission of the leasing company, was done by changing the name, licensing and registration on the leasing documents. No paperwork was done between the companies because Respondent New Jersey was by then dissolved and closed.

The 1993 state tax return, and the 1993 Federal corporate tax return for Respondent New Jersey listed as a return address, the Brooklyn location of Respondent New York. Maddalena uses the New York address routinely so that all his mail is received at the New York address of Respondent New York.

Analysis and Discussion

Respondent first claims that this case must be dismissed because he relied upon a Board agent's statement to him in 1993 that the matter was going to be dismissed.

I need not consider that defense because the Board rejected it when Respondent raised it in its response to a notice to show cause in a proceeding on the General Counsel's motion for summary judgment for Respondent's failure to file an answer to the complaint. 312 NLRB 412 (1993).

The first amended compliance specification alleges that Respondent New Jersey has maintained its mailing address at the business office and address of Respondent New York; that it and Respondent New Jersey have been affiliated business enterprises with common officers, ownership, directors, management, and supervision; have formulated and administered a common labor policy; have shared common premises and facilities; and have held themselves out to the public as a single-integrated business enterprise.

The specification also alleges that Respondents New Jersey and New York are alter egos and a single employer.

Respondents assert that they are separate corporations, and that Respondent New York has no obligation to fulfill the remedial obligations of the Board's Supplemental Order.

Maddalena argued that the two companies were separate. In his brief, Maddalena stated that the two companies had the same name because he received a service mark for the name "Task Force." The U.S. Patent and Trademark Office register for the service mark states that it was issued to Task Force Security & Investigations Inc. (New York Corporation), 1049 Dahill Road, Brooklyn, New York. Maddalena states that he has the right to use the name anywhere in the United States. The Certificate of Registration was issued by the Patent and Trademark Office on November 30, 1993.

The Board examines the following factors in determining whether two or more employing entities constitute a single employer: (1) common ownership, (2) interrelation of operations, (3) common management, and (4) centralized control of labor relations. Not all of these criteria must be present to establish single employer status, and a significant factor is the absence of an "arm's length relationship found among unintegrated companies." *Denart Coal Co.*, 315 NLRB 850, 851 (1994).

As to common ownership, Frank Maddalena is the sole owner, stockholder, and director of Respondent New York and Respondent New Jersey. He alone decided to begin a New Jersey operation.

Regarding common management and centralized control of labor relations, Maddalena conceded that he was responsible for all the decisions of the companies. He is in overall charge of both operations. Although there is a hierarchy of managers and assistant managers who supervise the day-to-day operations of the companies, it is clear that Maddalena is at the top of the supervisory structure. *Masland Industries*, 311 NLRB 184, 186 (1993).

Similarly, although the employees of the two companies were directly and separately supervised by their managers who are on site, Maddalena had the highest ranking authority over all such managers at both locations. "In assessing the appropriateness of single employer treatment, the fact that day to day labor matters are handled at the local level is not controlling." *Pathology Institute*, 320 NLRB 1050, 1063 (1996).

Maddalena responded to the unfair labor practice matter for Respondent New Jersey; and essentially maintains the same personnel policies, particularly with respect to progressive discipline at both locations. Although the Port Authority has specific rules with respect to hiring and discharge, and that Respondent New Jersey's decisions with respect to those matters may have been occasionally overruled by the Port Authority, nevertheless, it was Maddalena who interviewed employees, and made the final recommendations concerning the hire and discharge of employees there. *Denart Coal Co.*, supra.

Although routine matters concerning operations and discipline of employees may not have been brought to Maddalena's attention, he was advised of instances of serious misconduct and unusual occurrences at the Newark facility.

With respect to interrelation of operations, there is no evidence of interchange of employees between the New York and New Jersey operations. However, such evidence is not necessary to a finding of single employer status between the two companies. Two companies which are geographically separate may constitute a single employer where there is other evidence of an interrelationship between them. *Allegheny Graphics*, 320 NLRB 1141, 1143 (1996). Here, I find sufficient involvement in the New Jersey operation by Maddalena to overcome the geographical separation between Respondents New York and New Jersey.

Thus, it is clear that Respondent New Jersey was totally dependent upon Respondent New York for its financial viability. As a result of Maddalena's underestimating his costs, and Port Authority's monthly payment, Respondent New Jersey was frequently unable to meet its payroll. At each instance, Respondent New York lent money to its New Jersey counterpart in order to permit it to meet its payroll. As conceded by Maddalena, Respondent New Jersey would have been out of business but for the periodic infusion of funds by Respondent New York.

Interrelation is further established by Maddalena's involvement in the unfair labor practices. The Board found that Maddalena, and his son, Frank Jr. violated Section 8(a)(1) of the Act by informing Respondent New Jersey's employees that selection of a union would be futile, and violated Section 8(a)(3) and (1) of the Act by conditioning prospective employees' employment upon their remaining nonunion. 312 NLRB at 413. Maddalena also refused to employ the three dischargees here in violation of Section 8(a)(3) and (1) of the Act. In this regard it is noted that Frank Maddalena Jr. al-

though technically an employee only of Respondent New York, was involved in the interview of the New Jersey employees, and participated in the commission of the unfair labor practices there.

The absence of an arm's-length relationship between the companies is also shown in the informal, electronic transfer of funds between the companies whenever money was needed by Respondent New Jersey, without written evidence of the loans, interest payments or term within which the loan must be repaid.

Further, the two companies use the same accountant, and have a common mailing address.

The determination of alter ego status relies upon the same criteria as that used to decide the issue of single employer, and in addition the following factors are considered: whether the two companies have the same business purpose and customers, and whether the alter ego was created in order to evade responsibilities under the Act. *Three Sisters Sportswear Co.*, 312 NLRB 853, 861 (1993). The latter factor is not necessary to find that one company is the alter ego of another. *Stardyne, Inc. v. NLRB*, 41 F.3d 141, 148–151 (3d Cir. 1994).

It cannot be said that Respondent New York has the same customers as Respondent New Jersey, and thus New York does not constitute the same business in the same market. Respondent New Jersey had one customer only, the Port Authority. It was two states and miles away from Respondent New York's operation. In contrast, Respondent New York had many customers. The only similarity between the two operations was that they both provided security guard services. It further cannot be found that Respondent New York was the disguised continuance of Respondent New Jersey.

Similarly, it is clear that Respondent New York was not created to enable Respondent New Jersey to evade its backpay obligations. Respondent New York was formed 7 years before Respondent New Jersey was created, and it continued in existence after Respondent New Jersey's demise, doing business for its regular customers. There is no evidence that when Respondent New Jersey went out of business, Respondent New York attempted to take over New Jersey's contract, or bid on a new contract with the Port Authority. Accordingly, alter ego status cannot be based upon this factor.

I accordingly find that Respondent New York and Respondent New Jersey constitute a single employer. I do not find that Respondent New York is the alter ego of Respondent New Jersey.

The Liability Question

Derivative liability may be imposed on nominally separate businesses which the Board finds are so closely related that they comprise a single integrated enterprise. *Allegheny Graphics*, supra at 1142.

Inasmuch as I find that Respondent New York and Respondent New Jersey constitute a single employer, I conclude that Respondent New York is liable for the backpay due and owing to employees as a result of the unfair labor practices committed by Respondent New Jersey.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[10]

ORDER

The Respondent Task Force Security and Investigations, Inc. (NJ), d/b/a Task Force Security and Investigations, and it Alter Ego, Task Force Security and Investigations, Inc. (NY), their officers, agents, and representatives, shall make whole the individuals named below, by paying them the amounts following their names, plus interest computed in accordance with *New Horizons for the Retarded*, 283 NLRB 1173 (1987), minus tax withholdings required by Federal and state laws:

Willie France	$36,217.79
Donald Hall	41,929.47
Hakim Razzaaq	34,634.85

[10] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.